

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1652

SPONSOR: Governmental Oversight and Productivity Committee and Senator Wise

SUBJECT: Governmental Reorganization; Department of State

DATE: April 19, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Fav/CS
2.	_____	_____	CP	_____
3.	_____	_____	EE	_____
4.	_____	_____	NR	_____
5.	_____	_____	ATD	_____
6.	_____	_____	AP	_____

**I. Summary:**

The committee substitute permits the Secretary of State to appoint an assistant secretary and two deputy secretaries. The bill changes the name of the Division of Corporations to the “Division of State Recordings” and establishes the Bureau of Central Computing Support Services within the Division of Administration. The bill encourages the department to computerize its grant application and other processes. Further, it authorizes the department to cross train employees with grant expertise in the divisions with responsibility for grant awards and requires it to use uniform grant processes and forms, where appropriate. The bill explicitly prohibits modification of legislatively-established standards, the program, grant relationships and responsibilities established in law. Further, the bill explicitly states that statutorily required duties and responsibilities of programs assigned to divisions within the department are not to be changed without specific statutory revision.

The bill designates the Director of the Office of Tourism, Trade, and Economic Development to serve as the state protocol officer and authorizes that office to provide assistance and facilities to the Organization of American States in establishing and maintaining a regional headquarters in Florida. It also transfers the administration of the linkage institutes between postsecondary institutions in Florida and foreign countries to the Department of Education.

The bill requires local public libraries to enforce an Internet safety policy that provides for the installation of a technology protection measure, e.g., Internet filtering software, on public computers that blocks access to visual depictions that are obscene or child pornography, and additionally, in the case of minors, that are harmful to minors. The bill also provides that the technology protection measure must be disabled upon an adult’s request to use the computer for bona fide research or other lawful purpose.

Numerous cross-reference changes are made in the bill to reflect the above-referenced changes.

The bill takes effect July 1, 2004.

This bill amends the following sections of the Florida Statutes: 14.2015, 15.16, 15.182, 20.10, 119.092, 205.023, 213.053, 213.50, 257.12, 157.192, 257.41, 265.2865, 265.606, 265.701, 265.702, 265.703, 267. 267.031, 267.0612, 267.0731, 267.14, 267.145, 267.16, 288.0251, 288.809, 288.816, 288.8175440.02, 440.05, 607.0401, 607.1506, 617.0401, 617.1506, 620.103, and 865.09.

The bill creates section 257.44 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 15.0913, 15.17, 15.19, 265.51, 265.52, 265.53, 265.54, 265.55, and 265.65.

## **II. Present Situation:**

### **Governmental Structure – Executive Branch**

#### **A. General Provisions**

Chapter 20, F.S., provides for the organizational structure of the executive branch of government. The chapter reiterates the doctrine of the separation of powers within state government among the legislative, executive, and judicial branches of government. Section 20.02, F.S., states:

...The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute. A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the powers and duties which the department is authorized to execute are delegated by the Legislature:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting

outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights individuals.

Section 20.02, F.S., requires agencies that compose the executive branch to be consolidated into no more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness.

Section 20.04, F.S., provides the structure of the executive branch of state government. The department is the principal administrative unit of the executive branch. The principal unit of the department is the division, which may be further subdivided into bureaus. A bureau may be further divided into “sections” and “subsections.” Section 20.04, F.S., specifically authorizes departments to combine these various office subdivisions for field operations.

Section 20.04(3), F.S., specifically exempts the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation from the standard organizational structure for executive branch departments that is established in that subsection.

Subsection 20.04(7)(a), F.S., explicitly forbids department heads from reallocating duties and functions specifically assigned by law to a specific unit of a department, unless otherwise authorized by law. Functions or agencies assigned generally to a department without specific designation to a unit of a department may be allocated and reallocated to a unit at the discretion of the agency head.

Further, an agency head is authorized to recommend the establishment of additional divisions, bureaus, sections, and subsections, within the limitations of the organizational structure provided in ch. 20, F.S., to promote efficient and effective operation of a department.

Section 20.04(7), F.S., permits new bureaus, sections, and subsections to be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor or as established by specific statutory enactment. The subsection explicitly limits initiation of new divisions and sub-units for the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation except by specific statutory enactment.

## **B. Reorganization – General Provision**

Section 20.02(3), F.S., contemplates the regular review of agency organizational structures to maintain agency efficiency:

Structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to public needs.

Management and coordination of state services is to be improved and overlapping activities eliminated. Further, s. 20.02(4), F.S., requires departments to be organized along functional or program lines.

### **Structure and Responsibilities of Department of State:**

The Department of State (DOS), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration. In FY 2003-04, DOS had 491 positions and a budget of \$108.8 million.

The Department of State is charged with the responsibility for:

- < Serving as the official custodian of records;
- < Administering and enforcing the state election laws;
- < Filing acts and papers of the Legislature and county ordinances;
- < Filing all rules and regulations contained in the Florida Administrative Code and publishing and distributing proposed rules and regulations in the Florida Administrative Weekly for state agencies;
- < Issuing commissions to all elected and appointed officials;
- < Maintaining financial disclosures for all constitutional and state officers and specified employees;
- < Qualifying all federal and state candidates;
- < Serving as the ministerial filing agency that serves as the statewide repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks;
- < Preserving and promoting the state's cultural heritage and programs through cultural grant programs and promotional programs and implementing programs to gain international recognition on behalf of Florida artists and arts programs;
- < Protecting, preserving, and promoting Florida's historical resources through encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage;
- < Administering the statewide historic preservation plan and administering historic properties of the state, either directly or through management of contracts;
- < Providing library, records management, and archival services at the state and local level; and,
- < Enhancing and coordinating foreign affairs and diplomacy fostering global relationships for Florida.

The Division of Corporations is a ministerial filing agency that serves as the statewide central repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks. The division has two bureaus: Commercial Recording and Commercial Information Services. The division has 157 FTE and division

funding of almost \$12 million in FY 2003-04.

The Division of Cultural Affairs is made up of the Office of the Director and Bureau of Grants Services. The division awards, administers, monitors, and evaluates cultural grant programs of the Department of State, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida. There are 19 FTEs in the division. Funding for FY 2003-04 was almost \$7.1 million.

The Division of Elections is diverse and oversees many different functions. The division is comprised of the Director's office and three bureaus: Election Records; Voting System Certification; and Administrative Code and Weekly. There are 45 FTE and division funding in FY 2003-04 was \$10.9 million.

The Division of Elections administers and enforces the state election laws; files acts and papers of the Legislature and county ordinances; files all rules and regulations contained in the Florida Administrative Code; publishes and distributes proposed rules and regulations in the Florida Administrative Weekly for state agencies; issues formal advisory opinions; oversees the Florida Voter Registration Act; issues commissions to all elected and appointed officials; maintains financial disclosures for all constitutional and state officers and specified employees; and qualifies all federal and state candidates.

The Division of Historical Resources is charged with encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage. The responsibilities related to historic preservation are not only governed by state law but also by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470). The division is comprised of the Director's office and three bureaus: Archaeological Research, Historical Museums, and Historic Preservation. The division has 94 FTE and division funding in FY 2003-04 was \$17.9 million.

The division administers public information programs, the statewide historic preservation plan, the operation of historic sites and properties, and state and federal grants for historic preservation. Its duties also include the maintenance and operation of Florida's state historic museums, promotion and administration of the Florida Folklife Program, and administration of various archaeological research and preservation programs, including a historic marker program. Apart from the R.A. Gray Building where the Florida Museum of History and the division offices are housed, 63 other properties are assigned (leased) to the division to manage on behalf of the state. Only five of those are directly managed by the division, two more are not maintained by the division but the division has responsibility for maintaining exhibits, and the remainder are subleased to other entities.

Division of Library and Information Services provides library, records management, and archival services at the state and local level. Structurally, the division administers these services through three bureaus: Archives and Records Management, Library and Network Services, and Library Development. The division provides direct library services to state government, management

services, technical assistance, education, financial aid, and cooperative services. Working in partnership with archivists, librarians, records managers, government officials, and citizens, the division seeks to ensure access to materials and information of past, present and future value to enable state government and local libraries and agencies to provide effective information services for the benefit of the people of Florida. The division has 106 FTE with an appropriation of approximately \$37.8 million with approximately 80 percent of the funds being used for grants.

### **Creating Opportunities for Quality Communities Workshops**

Six regional workshops were held in August and September 2003 by the Department of State and the Department of Community Affairs to discuss the merger of the two departments and the effectiveness of the structure of the Department of State. These meetings were held, in part, in response to legislative proviso in the 2003 Appropriations Act that directed the Department of State to evaluate its programs, functions, and activities. A report was required to be prepared and submitted to the Governor and the Legislature containing current and proposed organizational overviews of the Department of State and recommending statutory and budgetary changes for achieving efficiencies in management and operation, improving service delivery to the public and ensuring compliance with federal and state laws.

An internal evaluation of the Department of State's executive management team put forward a baseline plan on an internal reorganization based on statutory functions: Custodian of State Records and Chief Cultural Officer.

At the November 18, 2003, House Commerce Committee meeting the two deputy secretaries of the Department of State presented the proposed structure for change within the Department of State. Their positions were already created by the Secretary of State; however, the structure below them needed legislative authorization and statutory change to implement.

### **Public Libraries**

**A. State regulation of Internet access in public libraries:** Currently, Florida law does not require libraries to install and maintain software or equivalent technology that prohibits access to obscene material on library computers. Such technology is commonly called "blocking" or "filtering" software. Blocking or filtering software works in different ways. Some software programs block all Internet sites unless the administrator specifically permits access to that site. Other software programs maintain a continually updated list of sites and blocks those sites, or categories of sites, selected by the subscriber. Other filtering software works by filtering certain words and/or graphic depictions. Additionally, the software may be terminal-based, i.e., it is installed on each individual computer's hard drive, or it may be server-based, i.e., it is installed on the server and used by each computer on the server network.

According to the Department of State (DOS), as of March 2003, each of the library systems with countywide responsibilities in Florida's 67 counties has public access Internet Use Policies. These policies vary from county to county, but can be categorized as follows:

- 56 counties prohibit the display of obscene images;
- 5 counties prohibit the display of images offensive to others;

- 2 counties prohibit minors from accessing obscene images; and
- 4 counties do not prohibit the display of obscene images.

Twenty-eight counties filter access to obscene images on all computers and six counties filter computers used by children. Thirty-three counties do not filter Internet access.

**B. Federal regulation of Internet access in public libraries:** The Children’s Internet Protection Act (CIPA) and Neighborhood Internet Protection Act were passed by Congress as part of H.R. 4577 on December 15, 2000. The CS was signed into law (Public Law 106-554) on December 21, 2000, and became effective April 20, 2001.

Under the new law, K-12 schools and libraries that receive E-rate discounts for Internet access<sup>1</sup> must block or filter all access to visual depictions (not text) that are obscene, child pornography, or in the case of minors, harmful to minors.<sup>2</sup> The blocking or filtering software may be disabled for adults for “bona fide research or other lawful purpose.”<sup>3</sup>

The libraries must also adopt an Internet Safety Policy that addresses the following issues:

- Access by minors to inappropriate matter on the Internet;
- Safety and security of minors when using e-mail, chat rooms, and other forms of direct electronic communication;
- Unauthorized access, including hacking and other unlawful online activities by minors; and
- Measures designed to restrict minors’ access to harmful materials.

The determination of what matter is inappropriate for minors is to be made by the school board, local educational agency, library, or other authority responsible for making the determination.<sup>4</sup>

Materials which are deemed harmful to minors are defined as:

- Any picture, image, graphic image file, or other visual depiction that:
  - Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
  - Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
  - Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.<sup>5</sup>

<sup>1</sup> Libraries that receive E-rate funds only for non-Internet-related “telecommunications services” need not comply with the act.

<sup>2</sup> The CIPA contains statutory references to the definitions of the terms “obscene” and “child pornography,” and provides a definition for the phrase “harmful to minors.” 47 U.S.C. s. 1703(3).

<sup>3</sup> The act does not define this phrase.

<sup>4</sup> 47 U.S.C. s. 254(1)(2).

<sup>5</sup> 20 U.S.C. s. 3601; 20 U.S.C. 9134; 147 U.S.C. s. 254.

The CIPA also applies to libraries that do not receive E-rate funds, but do receive funds pursuant to the Elementary and Secondary Education Act of 1965 and the Museum and Library Services Act. The requirements for these libraries are substantially similar to those for libraries receiving E-rate funds.

Data provided by the Department of State for the 2003 E-Rate funding year reflect the following information related to Florida libraries: (a) 54.1 percent received E-rate funding that required CIPA compliance; (b) 11.8 percent received E-Rate funding that did not require CIPA compliance; (c) 23.5 percent did not apply for E-Rate funding; (d) 2.4 percent were denied E-Rate funding; and (e) the E-Rate funding status of 8.2 percent was unknown.

**C. State Aid to Libraries Program:** The Division of Library and Information Services within the DOS administers the State Aid to Libraries program, which provides operating grants to public libraries.<sup>6</sup> Such grants may be no more than 25 percent of local funds expended to operate and maintain a public library. The Legislature annually appropriates funds for grants, which are prorated among eligible recipients. The division notes that with the exception of the first year of grants in 1962/63, annual appropriations have not been sufficient to meet the 25 percent match authorized in law.

According to the Division, the following libraries received state operating grant funds for FY 2003-2004: (a) libraries in all 67 counties; and (b) libraries in 11 municipalities. Libraries in 16 other municipalities were eligible for the grants, but did not apply.

### III. Effect of Proposed Changes:

The bill amends s. 20.10, F.S., to specifically provide for the Secretary of State to appoint an Assistant Secretary and two deputy secretaries to serve at the pleasure of the Secretary. The two deputy directors specifically authorized by the bill are the:

- < Deputy Secretary for Cultural and Historical Programs, who is directly responsible to the Secretary, has oversight of the Divisions of Historical Resources and Cultural Affairs, and performs other duties as assigned by the Secretary; and
- < Deputy Secretary for State Records, who is directly responsible to the Secretary, has oversight of the Divisions of Library and Information Services, Elections, and Corporations, and performs other duties as assigned by the Secretary.

The bill renames the Division of Corporations as the Division of State Recordings to more accurately reflect the varied duties of the division and makes conforming changes in various sections of law. A Bureau of Central Computing Support Services is added to the Division of Administration. Direction is provided on computerizing departmental grants processes and, where appropriate, using uniform grant processes and forms. To the extent feasible, cross training grants staff is encouraged. The department is not to modify the standards or the program and grant relationships and responsibilities established in law. Changes in any statutorily required duties or responsibilities of any division or of the department are specifically prohibited without specific statutory authorization.

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<sup>6</sup> Sections 257.14 through 257.25, F.S.

The bill transfers certain international programs from the Department of State to the Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor by a type two transfer and makes conforming changes. The programs being transferred include: the provision of assistance and facilities to the Organization of American States, the state protocol officer functions, international development outreach activities in Latin America and the Caribbean Basin (FAVA/CA), the Florida Intergovernmental Relations Foundation, the Accord of the States of the Gulf of Mexico, the Florida/Korea Economic Cooperation Committee, Inc; and intergovernmental relations functions. Sections 15.17 and 15.19, F.S., relating to the provision of assistance and facilities to the Organization of American States and the performance of state protocol officer functions are repealed to conform to the transfer.

This bill also transfers the duty of administration for the linkage institutes between postsecondary institutions in this state and foreign countries from the Department of State to the Department of Education by a type two transfer and makes conforming changes.

Also, in the area of responsibility for the Division of Cultural Affairs, the bill designates the division as the state arts administrative agency; requires a post audit for cultural endowment recipients; requires a recordation of a restrictive covenant for cultural facility and regional cultural facility grantees, as well as a requirement for bonds and for repayment of grant awards under certain circumstances; and, creates a citizen support organization to assist the division with its cultural and arts programs. The bill also deletes obsolete language and repeals language relating to the authority of the department to enter into indemnity agreements.

The bill expands the current legislative intent relating to the preservation and protection of archaeological sites and objects of antiquity to include such assistance through the establishment of a network of regional public archaeology centers.

Additionally, in the area of historical resources the bill revises the Florida Historical Commission to permit members to stay in office until a replacement is appointed and removes obsolete language in the areas of Folklife and Great Floridians.

In the area of library and information services, the bill designates the Division of Library and Information Services as the state library administrative agency for federal purposes; changes the size, composition, and selection process of the State Library Council; modifies the responsibilities of the State Librarian; provides definitions for the chapter governing the Division of Library and Information Services; and creates a citizen support organization to assist the division with its library, archives, and records management programs. The bill also deletes obsolete language relating to library grants.

Additionally, the bill creates s. 257.44, F.S., effective October 1, 2004, to require local public libraries<sup>7</sup> to enforce an Internet safety policy that provides for the installation of a technology protection measure on public computers that protects against access to visual depictions that are

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<sup>7</sup> The term "public library" is defined to mean a library that is open to the public and that is established or maintained by counties, municipalities, consolidated city-county governments, special districts, and special tax districts. The term "public library" does not include a library that is open to the public and that is established or maintained by a community college or state university.

obscene or child pornography, and in the case of minors, that are harmful to minors.<sup>8</sup> The bill provides that the technology protection measure must be disabled upon an adult's request to use the computer for bona fide research or other lawful purpose, and requires the library to post a notice in a conspicuous location stating that the library has an Internet safety policy that is available for review.

Two enforcement mechanisms for the technology protection requirement are provided by the bill. The first mechanism permits a civil enforcement action to be brought by a resident, and requires the court to assess fines and reasonable attorney's fees and costs against libraries found not to have made reasonable efforts to comply with the requirements of the bill. Any fines collected under this provision are to be deposited in the Records Management Trust Fund within the Department of State. The second mechanism requires the Division of Library and Information Services to adopt rules that require a demonstration of compliance with the bill's requirements as a condition of a public library's receipt of state funding distributed pursuant to ch. 257, F.S.

Finally, in the area of responsibility of the Division of Corporations, two additional changes are made to delete s. 15.0913, F.S., an obsolete provision of law relating to requiring the division to be accountable for certain performance standards for Uniform Commercial Code documents and to amend s. 15.16, F.S., to remove a specific listing of chapters for which the Department of State may ask for electronic filing of records.

The bill becomes law on July 1, 2004, except that the section of the bill which creates s. 257.44, F.S., takes effect on October 1, 2004.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill requires local public libraries to purchase technology protection measures that prohibit Internet access to visual depictions that are obscene, child pornography, and harmful to minors. The bill does not fund this requirement.

Pursuant to Art. VII, s. 18 of the Florida Constitution, the provision concerning local mandates, the Legislature may not pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided. The bill is anticipated to have an insignificant fiscal impact, i.e., less than \$1.63 million, based on the DOS's estimate that this bill's fiscal impact is \$220,000 for the first year and \$560,000 for future years.<sup>9</sup> Thus, the bill appears to be exempt from the constitutional mandate funding requirements.

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<sup>8</sup> The term "harmful to minors" is defined to mean any image that: (1) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (2) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals; and (3) taken as a whole, lack serious literary, artistic, political, or scientific value as to minors. This definition is identical to the definition of "harmful to minors" contained in the CIPA.

<sup>9</sup> Article VII, s. 18(d) of the Florida Constitution, provides that laws having an "insignificant fiscal impact" are exempt from the constitutional mandate funding requirements. The term "insignificant fiscal impact" means the aggregate total of the impact is less than the average state population for a fiscal year times ten cents. In April 2001, the state population was

In the event that the fiscal impact of this bill would exceed \$1.63 million, the bill may be excepted from the constitutional mandate funding requirements, given its legislative finding that it fulfills an important state interest, if it is passed by two-thirds of the membership in both houses of the Legislature.<sup>10</sup>

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

The bill also provides that trust funds associated with the programs related to the provision of assistance and facilities to the Organization of American States, state protocol officer functions, international development outreach activities in Latin America and the Caribbean basin, the Florida Intergovernmental Relations Foundation, and the intergovernmental relations function authorized by s. 288.816, F.S., remain with the Department of State, notwithstanding the provisions of s. 20.06(2), F.S.

The linkage institutes between postsecondary institutions in Florida and foreign countries that are authorized by s. 288.817, F.S., are transferred by a type two transfer from the Department of State to the Department of Education. The bill also provides that trust funds associated with the foregoing program remain with the Department of State, notwithstanding the provisions of s. 20.06(2), F.S.

**D. Other Constitutional Issues:**

The CIPA was enacted by Congress in 2000. As discussed in the “Present Situation” section, *supra*, the Act requires public libraries that receive specified federal funding to install technology protection measures that block visual depictions that are obscene or constitute child pornography, and in the case of minors, that are harmful to minors.

In 2002, the American Library Association and the American Civil Liberties Union filed suit against the federal government, challenging the constitutionality of CIPA. The Court for the Eastern District of Pennsylvania held that the CIPA’s mandatory filtering requirements violated the First Amendment of the U.S. Constitution because current filtering technology blocks not only illegal material, i.e., child pornography and obscenity, but also blocks constitutionally protected speech.<sup>11</sup>

On June 23, 2003, the U.S. Supreme Court reversed, holding that the CIPA does not violate the First Amendment and does not impose an impermissible condition on libraries that received federal funding.<sup>12</sup> In a plurality opinion, Chief Justice Rehnquist found that Congress may attach conditions to federal funding in order to compel certain behavior so

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16,331,739; thus, fiscal impacts less than \$1.63 million are deemed insignificant. See “2002 Intergovernmental Impact Report,” Florida Legislative Committee on Intergovernmental Relations, February 2003.

<sup>10</sup> See Article VII, s. 18(a) of the Florida Constitution.

<sup>11</sup> 201 F. Supp. 2d 401 (E.D. Pa. 2002).

<sup>12</sup> *U.S. v. American Library Ass’n, Inc.*, 123 S.Ct. 2297 (2003).

long as that behavior is constitutional.<sup>13 14</sup> The Chief Justice found Internet filtering to be constitutional behavior, given that the goal of libraries is not to provide “universal coverage” of all materials. He also found that libraries make content-based decisions when collecting materials.<sup>15</sup> For example, most libraries exclude pornography from their collections. Moreover, any concerns over filtering software’s tendency to erroneously overblock access to constitutionally protect speech are alleviated by the fact that adult patrons may have the filtering software disabled.<sup>16</sup> Accordingly, the Chief Justice held that libraries were likewise entitled to make content-based decisions regarding materials collected from the Internet.<sup>17</sup>

The bill’s requirement that Florida public libraries install technology protection measures is substantively identical to that contained in the CIPA. Accordingly, it appears the bill would withstand the constitutional challenges resolved by the U.S. Supreme Court in the *American Library Association* case.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill will limit the type of Internet content that may be accessed by the public at county and municipal libraries. The bill will permit residents to bring enforcement actions in civil court against public libraries that fail to comply with the bill’s Internet Safety Policy requirements.

### C. Government Sector Impact:

**Cost associated with filtering software:** The DOS has indicated that it is impossible to determine the precise fiscal impact of this bill because some libraries may have access to free filtering products provided by their Internet Service Provider, while others will have to purchase such products.

The DOS estimates that 133 library administrative units would be affected by the bill and that 74 of these units currently filter all or some of the unit’s computers. These libraries pay approximately \$340,000 per year for server based filtering. For the remaining 59 units that do not filter, the DOS estimates that it would cost these units approximately \$220,000 to comply with the bill if they installed server based filtering technology. Accordingly, the total annual recurring costs to libraries would be \$560,000. The DOS also indicates that these costs are based on utilization of Websense, a server based

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<sup>13</sup> Justices O’Connor, Scalia, and Thomas joined the plurality opinion drafted by Chief Justice Rehnquist. Justices Kennedy and Breyer concurred separately, and Justices Stevens, Souter, and Ginsburg dissented.

<sup>14</sup> *Id.* at 2303.

<sup>15</sup> *Id.* at 2304.

<sup>16</sup> *Id.* at 2306.

<sup>17</sup> *Id.*

filtering technology, and are exclusive of costs for servers and personnel to install and maintain the filtering products.

There appears to be a wide range of pricing for Internet filtering software. Server based technology appears more expensive than terminal based filtering technology that is installed individually on each computer. During the 2003 Legislative Session when SB 1250, a bill which required county and municipal libraries to install filtering technology, was considered, Kidsnet, Inc. indicated that its Internet filtering product called LibraryNet sold for \$12 per computer. The DOS indicated at that time approximately 2,293 public library computer units were not being filtered. Accordingly, if the LibraryNet product had been purchased the total cost for libraries not yet filtering would have been \$27,516.

**Fines and attorney's fees and costs:** Public libraries that fail to comply with the bill's Internet Safety Policy requirements are subject to civil enforcement suits by residents. If a library is found by the court to be in non-compliance, the court is required to order assessment of a fine of \$100 per day per library location beginning from the date that non-compliance was first noticed. Additionally, the court is required to award reasonable attorney's fees and costs to be paid to prevailing citizens by losing administrative units. The fiscal impact of the fines, fees, and costs is indeterminate as the number of public libraries that will fail to comply with the bill and that will be sued is unknown.

**State funding:** The bill provides that the head of each administrative unit must annually attest in writing, under penalty of perjury, that all public library locations within the unit are in compliance with the bill's Internet Safety Policy requirements as a condition of the receipt of state funds distributed under ch. 257, F.S. Thus, public libraries failing to comply with the bill will not be eligible for funds provided by the Division of Library and Information Services within the DOS through the State Aid to Libraries Program in ch. 257, F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.